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| MINNIE PIERCY |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 256,614 |
| WHEATRIDGE PARK CARE CENTER |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| HARTFORD ACCIDENT AND INDEMNITY |) | |
| Insurance Carrier |) | |

1. Did the Judge err by addressing medical treatment at the August 22, 2000 preliminary hearing or in the August 28, 2000 preliminary hearing Order?

2. Did the Judge err by appointing a physician as opposed to ordering respondent and its insurance carrier to provide claimant the names of three physicians from which to select a treating physician?
3. Does the Appeals Board have the jurisdiction to review either issue?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The Appeals Board has the jurisdiction to review the first issue raised by respondent and its insurance carrier. But the Board concludes that the Judge did not exceed her authority or jurisdiction by addressing the issue of medical treatment at the August 22, 2000 preliminary hearing.

The Workers Compensation Act provides that parties requesting preliminary hearings must give written notice to the other parties at least seven days before filing their application for a hearing. Further, that notice must contain a specific statement of the benefits being sought.¹

But the Kansas Supreme Court has held that an important objective of workers compensation law is avoiding cumbersome procedures and technicalities of pleading so that a correct decision may be reached by the shortest and quickest possible route.² The Court has also held that the Division of Workers Compensation is not bound by technical rules of procedure but it must (1) give the parties a reasonable opportunity to be heard and to present evidence, (2) insure an expeditious hearing, and (3) act reasonably and without partiality.³

The Appeals Board concludes that claimant's July 24, 2000 letter to opposing counsel effectively amended the earlier preliminary hearing notice as it adequately and timely notified opposing counsel that medical treatment would be an issue at the upcoming preliminary hearing. Therefore, the Judge did not err by addressing medical treatment at the preliminary hearing or in the August 28, 2000 Order.

2. The Appeals Board does not have the jurisdiction to review the issue of whether the Judge erred by failing to order respondent and its insurance carrier to provide claimant with the names of three physicians from which to select a treating physician. Because the

¹ K.S.A. 1999 Supp. 44-534a(a)(1).

² Pyeatt v. Roadway Express, Inc., 243 Kan. 200, 756 P.2d 438 (1988).

³ K.S.A. 1999 Supp. 44-523(a); Pyeatt, *supra*.

Board is without jurisdiction to address that issue on an appeal from a preliminary hearing order, that issue should be dismissed.

Because this is an appeal from a preliminary hearing order, not every alleged error in law or in fact is reviewable. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional.⁴

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide both timely notice and written claim of the accidental injury?
- (4) Is there any defense that goes to the compensability of the claim?

Additionally, the Appeals Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.⁵

Workers compensation judges have the authority and jurisdiction at preliminary hearings to award medical compensation.⁶ Whether a judge must, in a given set of circumstances, order respondent and its insurance carrier to provide claimant with a list of three physicians is not a question that goes to the jurisdiction of the judge. The judge has the power and jurisdiction to decide that question rightly or wrongly.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁷

WHEREFORE, the Appeals Board dismisses the second issue raised by respondent and its insurance carrier as the Board is without jurisdiction to review it from a preliminary hearing order. As to the first issue, the Board finds that Judge Fuller did not exceed her jurisdiction and, therefore, the Board affirms the August 28, 2000 Order.

⁴ K.S.A. 1999 Supp. 44-534a.

⁵ K.S.A. 1999 Supp. 44-551.

⁶ K.S.A. 1999 Supp. 44-534a(a)(2).

⁷ Allen v. Craig, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

IT IS SO ORDERED.

Dated this ____ day of October 2000.

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
Richard J. Liby, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director